Docket: 2022-1576(IT)I

BETWEEN:

HEIDI MELENCHUK,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on February 8, 2023 at Regina, Saskatchewan

Before: The Honourable Justice G. Renaud, Deputy Judge

Appearances:

Agent for the Appellant:	The Appellant herself
Counsel for the Respondent:	Steven Tymiak

ORDER

In accordance with the attached Reasons for Order, the notice of Appeal for the 2020 taxation year is quashed

There will be no order for costs.

Signed Ottawa, Canada this 27th day of March 2023.

"Gilles Renaud"

Renaud D.J.

Deputy Judge Renaud

Citation: 2023 TCC 27
Date: March 2nd, 2023
Docket: 2022-1576(IT)I

BETWEEN:

HEIDI MELENCHUK,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Renaud D.J.

I. INTRODUCTION

[1] The Respondent seeks to quash the Appeal submitting that the Court lacks jurisdiction to grant the relief sought. In the unusual circumstances of this case, the Court reserved on the Respondent's Motion, and directed that the Appeal be heard on the assumption that jurisdiction exists. Accordingly, the Appellant testified and made full submissions to support the merits of the lengthy and detailed Appeal she had framed, and the Respondent cross-examined the Appellant, and made full submissions. At the conclusion of the hearing, the Appeal was dismissed, based on oral reason that need not be repeated herein,

[2] The Reasons that follow explain the Court's decision to adopt the submissions of the Respondent, pursuant to section 12 of the *Tax Court of Canada Act*, R.S.C 1985, C T-2, as amended, quashing the Appeal on the foundation that the Court lacks jurisdiction.

II. **DISCUSSION**

A. A summary of the salient facts

[3] For present purposes, suffice it to say that the Appellant's grievance addresses the amount of the Saskatchewan graduate tuition tax credit (the 'SGTTC') that was available to reduce the Appellant's Saskatchewan tax for the 2020 taxation year. The SGTTC is a tax credit applied against provincial tax in accordance with the *Income Tax Act, 2000*, SS, C 1-2.01.

[4] Of note, the Respondent took no issue with the fact that the Minister did purport to assess the Appellant's entitlement to the SGTTC in respect of prior taxation years. Indeed, a portion of the cross-examination of the Appellant was devoted to the actions of officials of the Canada Revenue Agency in applying the Appellant's entitlement to SGTTC credit in other years.

B. The relevant pleadings of the Respondent

[5] On August 11, 2022, the Respondent filed a Reply with a Schedule, involving 13 paragraphs. Set out below are the passages relevant to the main question of the Court's jurisdiction and to the first secondary question, that of procedural fairness in the case of a self-represented party:

> 1) The Respondent will file a Motion on the day of the hearing of this Appeal to quash the Appeal in its entirety, on the basis that it is not properly before the Tax Court of Canada because this Appeal is in respect of the amount of the Saskatchewan graduate tuition tax credit (the 'SGTTC') available to reduce the Appellant's Saskatchewan tax for the 2020 taxation year. The SGTTC is a tax credit applied against provincial tax in accordance with the [provincial] *Income Tax Act, 2000* […]. Pursuant to s, 12 of the *Tax Court of Canada Act* … this Court's jurisdiction does not extend to appeals of assessments under the *Income Tax Act, 2000*, which must be appealed to the Court of Queen's Bench for Saskatchewan.
>
> […]
>
> 2) […] 9) The Issues are whether:
>
> a) The Appellant's Appeal with respect to the 2020 taxation year is properly before the Tax Court of Canada; […]
>
> 10) The AGC relies on subsections 118.5(1), 165(1), 167(1), 169(1) and 248(1) of the *Income Tax Act* … The AGC also relies on subsection 12(1) of the *Tax Court*

> *of Canada Act* and sections 37.1, 37.2, 39.1, 39.11, 98, 99, 102 and 103 of the *Income Tax Act, 2000*.
>
> 11) The AGC respectfully submits that pursuant to subsection 12(1) of the *Tax Court of Canada Act*, the Tax Court of Canada does not have jurisdiction to consider the Appellant's entitlement to the SGTTC. Under subsection 181(1) of the *Income Tax Act*, the Court can either dismiss an appeal from an assessment, or allow the appeal by vacating the assessment, varying the assessment, or referring the assessment back to the Minister to reconsideration and reassessment. The Tax Court of Canada's jurisdiction does not extend to appeals of assessments under the Income Tax Act, 2000, which must be appealed to the Court of King Bench for Saskatchewan. [*Emphasis added*]

C. The Court's procedural decisions

[6] At the outset of the hearing, the Court invited Counsel for the Respondent to submit all relevant information and case law in support of its position. The Court observed that if the Respondent's argument was so compelling that it appeared that there was no possible outcome other than to order the quashing of the Appeal, the Appellant would then advance her submissions. If this opportunity to respond did not result in identifying some hope of success in having the Appeal heard, the Respondent's position would prevail and the Appeal quashed.

[7] In the result, since the Respondent's submissions did not establish an unanswerable case, the Court did not invite the Appellant to respond, directing that these submissions in response on the subject of jurisdiction would be presented after the parties had debated the merits of the Appeal. Part of the justification for the order of submissions arose from the obvious pains taken by the Appellant in preparing a comprehensive multiple page factual outline and the submission of dozens of documents. The Court feared that an error on the chief issue of jurisdiction would potentially bring about a further trial "on the merits" in the distant future and that this procedure did not compromise the duty of the Court to apply the law on the day of trial.

D. The result of the hearing

[8] The Respondent demonstrated by means of a probing and respectful cross-examination, with documentation in support including the affidavit of Satvinder K. Hundal of January 24, 2023, that the Appellant had benefited from various internal decisions allocating appropriate credit for past SGTTC and that the Appeal was not meritorious. The Appellant demonstrated a number of prior errors but did not show that any of the assumptions found in the Reply were in error.

E. Further submissions were advanced

[9] The Respondent not having demonstrated that the Applicant had no possibility of a successful outcome at the conclusion of its initial submission, the Applicant went on to testify and to argue her case and the Court held that the well honed submissions contained in the Respondent's reply were correct. At the end of the day, the Appellant failed to demonstrate any error in the assumptions set out in the Reply and thus was incapable of justifying any relief. It is hoped, however, that the Applicant will seek a reconsideration of her prior grievances if she is able to obtain clear documentation from the University of Ottawa setting out any error in respect of her prior academic achievements, and costs and expenses to attain this success.

F. A review of the case law on the issue of the Court's jurisdiction

(1) Introductory Comment

[10] By way of introductory comment, the Respondent's decision not to file a casebook well in advance of the hearing contributed to the bifurcated procedure adopted by the Court. The controversy facing the Court on the morning of the hearing follows: either to take a few hours to review the cases supplied at the start of the hearing, or allowing the anxious Applicant to go ahead. Foremost in the Court's analysis was the estimation that reviewing the cases would require three or more hours. The self-represented litigant would require far less time to marshal her documents as she was well prepared and being anxious to begin, as noted, the Court elected to hear the case. Thereafter, a decision would be made as to the jurisdictional issue.

[11] This difficulty would have been avoided with a casebook. As it turns out, the Court required about six hours to consider fully the authorities submitted and other relevant precedents the Court researched.

(2) The legislative scheme commands a narrow view of jurisdiction

[12] It will be of assistance to analyze the case law by means of a thematic review to make plain that the Crown is correct to state that the legislative scheme severely restricts the jurisdiction of the Tax Court of Canada.

(3) The Tax Court of Canada is purely statutory in origin

[13] At the outset, the case of *Andrew Paving & Engineering Ltd. and Meld Development Ltd. v. The Minister of National Revenue*, 84 DTC 1157, decided by Chief Justice Christie, commands our attention. The relevant lengthy passage is found at page 1161:

> This Court is without jurisdiction with reference to these appeals to the extent that they pertain to penalties imposed and interest levied in relation to the $18,067.21. The existence of a collection agreement between the Government of Canada and the Government of Ontario cannot alter this. Division E of the Ontario Act provides for appeals to the Supreme Court of Ontario from assessments made under that legislation. Nothing in the Act, the Tax Court of Canada Act, or any other legislation enacted by or under the authority of the Parliament of Canada purports to confer such jurisdiction on this Court. The Tax Court of Canada is purely statutory in origin and the scope of its jurisdiction is entirely circumscribed by express or necessarily implied federal legislative authority. Moreover, I am of the opinion that if legislation were enacted by Parliament which purported to confer jurisdiction on the Tax Court of Canada to hear appeals from assessments made under the Ontario Act, it would be beyond the constitutional reach of Parliament. The Tax Court of Canada was established under the authority of section 101 of the Constitution Act, 1867. It provides:
>
> > The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada. [*Emphasis added*]

[14] I now wish to quote from the authority set out in *Hennick v. Canada*, [1998] T.C.J. No. 562, a judgment of Justice Bowman, later Chief Justice of the Tax Court of Canada. The Court observed at paragraphs 11 and 12:

> 11 Christie A.C.J. said in *Lamash Estate v. M.N.R.*, 91 D.T.C. 9 at page 16:
>
> > On further reflection I am reinforced in my view that the court does not have the jurisdiction referred to. The Tax Court of Canada is a purely statutory creation and its jurisdiction is confined to what is expressly conferred on it by Parliament and what is necessarily implied from what is expressly conferred. [*Emphasis added*]
> >
> > The Tax Court of Canada's jurisdiction is entirely circumscribed by express or necessarily implied federal legislative authority

[15] Refer again to *Andrew Paving & Engineering Ltd. and Meld Development Ltd. v. The Minister of National Revenue*, 84 DTC 1157, at page 1161, as well as to *Hennick v. Canada*, [1998] T.C.J. No. 562, at para. 11.

[16] In the case of *Gardner v. Canada*, [2001] F.C.J. No. 1954, 2001 FCA 401, Stone, Rothstein and Sexton JJ.A. provided valuable guidance on the jurisdiction of the Tax Court of Canada at para. 16. As written by Sexton J.A. for the Court: "Both the federal government and provinces have the jurisdiction to enact income tax laws. The Tax Court has jurisdiction with respect to provincial income tax only to the extent that jurisdiction is conferred upon it by the province. It is open to a province to reserve onto itself jurisdiction to decide particular issues with respect to its income tax and Ontario has done this…" [*Emphasis added*]

[17] In this instance, the Respondent argued that the provincial legislation conferred jurisdiction upon the Saskatchewan's King Bench to settle the type of Appeal framed by the Appellant.

[18] I now draw attention to the remarks advanced by the Federal Court of Appeal in *Sutcliffe v. Canada*, [2004] F.C.J. No. 1937, 2004 FCA 376. Noel J.A., later the Chief Justice, allowed an appeal from a judgment of the Tax Court of Canada and consigned these signal remarks, concurred in by Rothstein J.A., as he then was, and Sharlow J.A:

> 10 When the Minister makes such a determination, the provinces to which the income is allocated are entitled to assess tax. The record reveals that provincial income taxes were assessed on the basis of this allocation, not under the Act, but under the taxing statutes of respective provinces.
>
> 11 The income tax act of the provinces to which the income was allocated all provide for a right of appeal to the respective provincial superior courts from assessments levying provincial taxes on the basis of this allocation (*Income Tax Act*, R.S.N.B. c.I-2, s.22; *Income Tax Act*, R.S.N.S. 1967, c.134, s.22; Income Tax Act, R.S.N.L. 1990, c.I-1, s.26(1); *Income Tax Act*, R.S.B.C. 1996, c.215, s.42; *Alberta Personal Income Tax Act*, R.S.A 1980, c.A31, s.30; *Income Tax Act*, R.S.P.E.I. 1998, c.I-1, s.26; *Income Tax Act*, R.S.S. 1978, c.I-2, s.26; *Income Tax Act*, R.S.M. 1988, c.110, s.30; *Income Tax Act*, R.S.O. 1990, c.I-2, s.23). [*Emphasis added*]

[19] The Court added, at para. 14: "… the Tax Court of Canada does not have jurisdiction to pronounce on the validity of an assessment of provincial income taxes. This jurisdiction belongs to the superior courts of the respective provinces pursuant to the provincial statutes to which I have referred (see as to this *Andrew*

Paving and Engineering Ltd. et al. v. M.N.R., 84 DTC 1157 (TCC); *The Queen v. Bowater Mersey Paper Company Limited*, 87 DTC 5382 (F.C.A.); *Hennick v. Canada*, [1998] T.C.J. No. 562; *Gardner v. R.*, 2002 DTC 6776 (FCA))".

(4) No jurisdiction respecting an assessment of provincial income tax

[20] The direct statement found at page 5834 of *The Queen v. Bowater Mersey Paper Company Limited*, 87 D.T.C. 5382 (F.C.A.), *per* Pratte J.A. is authoritative: "Counsel for the respondent also argued in support of the judgment that the notices of reassessment of January 4, 1984, were not superseded by those of March 6 because the latter left intact the assessment of provincial tax contained in the earlier ones. This argument has no merit since this Court has no jurisdiction to entertain an appeal from an assessment of provincial income tax." [*Emphasis added*]

(5) No scope for equitable relief or based upon "fairness"

[21] The Court also considered the case of *Chaya v. Canada*, [2004] F.C.J. No. 1630, 2004 FCA 327, in which Justice Rothstein, as he then was, wrote for the Panel including Chief Justice Richard and Létourneau J.A. As we read at para. 4: "The applicant says that the law is unfair and he asks the Court to make an exception for him. However the Court does not have that power. The Court must take the statute as it finds it. It is not open to the Court to make exceptions to statutory provisions on the grounds of fairness or equity. If the applicant considers the law unfair, his remedy is with Parliament, not with the Court." [*Emphasis added*]

(6) The signal importance of s. 171 of the Income Tax Act

[22] I now draw attention to the remarks advanced by the Federal Court of Appeal in *Sutcliffe v. Canada*, [2004] F.C.J. No. 1937, 2004 FCA 376, at para. 15: "… The Tax Court of Canada derives its jurisdiction from statute. On an appeal pursuant to subsection 169(1), it may only grant the relief provided for in subsection 171(1) (vary, vacate or refer the assessment back to the Minister)."

(7) The signal importance of s. 12 of the *Tax Court of Canada Act*

[23] Below are para. 8 and para. 9 of *A&E Precision Fabricating and Machine Shop Inc. v. Canada*, 2013 FCA 173, a judgment of the Federal Court of Appeal delivered by Dawson J.A., on behalf of Sharlow and Stratas JJ.A.

> 8 Next, the Judge found that the respondent had set off its obligation to pay the taxed costs against the appellants' tax debts, and that the Tax Court had no jurisdiction to review such set off.
>
> 9 We agree that the Tax Court had no jurisdiction to review the respondent's set off. In the present cases, the jurisdiction of the Tax Court was limited to hearing and determining the appeals brought under the Act (subsection 12(1) of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2. This does not include the power to review collection procedures employed by the respondent. Jurisdiction with respect to collection procedures lies with the Federal Court. [Emphasis added]

[24] *Ereiser v. Canada*, [2013] F.C.J. No. 102, 2013 FCA 20 (F.C.A.), includes a good number of relevant remarks, penned by Sharlow J.A. on behalf of Pelletier and Mainville JJ.A. Firstly:

> 26 With that background, I turn to the statutory provisions that define the jurisdiction and role of the Tax Court of Canada with respect to appeals from income tax assessments. Its jurisdiction is established by subsection 12(1) of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, which reads as follows:

12. (1) The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under ... the *Income Tax Act*... when references or appeals to the Court are provided for in those Acts.	12. (1) La Cour a compétence exclusive pour entendre les renvois et les appels portés devant elle sur les questions découlant de l'application de ... la Loi de l'impôt sur le revenu dans la mesure où ces lois prévoient un droit de renvoi ou d'appel devant elle.

> 27 To understand the role of the Tax Court of Canada in income tax appeals, it is useful to begin with subsection 152(8) of the Income Tax Act, which sets out the legal effect of an assessment. It reads as follows:

152. (8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act	152. (8) Sous réserve des modifications qui peuvent y être apportées ou de son annulation lors d'une opposition ou d'un appel fait en vertu de la présente partie et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire malgré toute erreur,

relating thereto.	tout vice de forme ou toute omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi.

[25] I consider that it will assist the Appellant to understand more fully the result if I reproduce the paragraphs that follow:

> 28 Subsections 165(1) and 169(1) of the *Income Tax Act* give a taxpayer the right to object to an assessment (which essentially is an administrative review) and then to appeal the assessment to the Tax Court of Canada. Those provisions read as follows:
>
> > 165. (1) A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts ....
> >
> > 169. (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied

[26] Subsection 171(1) sets out the ways in which the Tax Court of Canada may dispose of an appeal. It reads as follows:

171. (1) The Tax Court of Canada may dispose of an appeal by: (a) dismissing it; or (b) allowing it and (i) vacating the assessment, (ii) varying the assessment, or (iii) referring the assessment back to the Minister for reconsideration and reassessment.	171. (1) La Cour canadienne de l'impôt peut statuer sur un appel: a) en le rejetant; b) en l'admettant et en : (i) annulant la cotisation, (ii) modifiant la cotisation, (iii) déférant la cotisation au ministre pour nouvel examen et nouvelle cotisation.

[27] Section 166 of the *Income Tax Act* limits the grounds upon which an assessment may be vacated or varied on appeal. It reads as follows:

166. An assessment shall not be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act.	166. Une cotisation ne peut être annulée ni modifiée lors d'un appel uniquement par suite d'irrégularité, de vice de forme, d'omission ou d'erreur de la part de qui que ce soit dans l'observation d'une disposition simplement directrice de la présente loi.

[28] By way of emphasis and to avoid any lack of clarity, Justice Stratas wrote the judgment of the Federal Court of Appeal in the case of *Pereira v. Canada (Attorney General)*, [2017] F.C.J. No. 1195. I have reproduced below his observations at para. 15:

> 15 The Tax Court had no jurisdiction to deal with this ground. The Tax Court can deal only with the validity of an assessment, not enforcement action taken by the Canada Revenue Agency. Challenges to decisions concerning enforcement can be pursued in the Federal Court by way of judicial review, but not in the Tax Court. See, e.g, *A&E Precision Fabricating and Machine Shop Inc. v. Canada*, 2013 FCA 173, at para. 9. [*Emphasis added*]

> The validity and correctness of the assessment is solely what is to be considered – not the conduct of officials in reaching the assessment

(8) No power to amend legislation

[29] The Federal Court of Appeal considered this jurisdictional issue in *MacKay v. Canada*, [2015] F.C.J. No. 456, 2015 FCA 94, and upheld the authority and wisdom of that judgment. Ryer, Near and Rennie JJ.A. held as follows:

> 2 This appeal is unusual in that the appellant does not argue that the amounts of tax, interest and penalties assessed against him for 2006 are incorrect. Rather, he argues that the amounts assessed as a result of the application of the formula in section 34.1 of the *Income Tax Act* are unfair and unjustified. In essence he argues that the formula in that provision of the Act ought to be changed. Unfortunately this Court has no power to amend legislation. [*Emphasis added*]

[30] Noteworthy as well is the subsequent case of *Meyer v. Canada*, [2019] T.C.J. No. 103, 2019 TCC 131, per Lafleur J., which illustrates the ongoing vitality of the Chaya decision. Due to the elegance of the language penned by Justice Lafleur, I think it wise to merely reproduce her wise words:

> 4 At the hearing, Mr. Meyer argued that the amount of $79,089 he had withdrawn from his RRSP should not have been included in the calculation of his income for the purposes of the EI benefits' repayment under section 145 of the EI Act, as benefits paid out of his RRSP, being of a different nature, should not be considered as income for the purposes of the EI Act.
>
> 5 At the hearing, counsel for the Respondent referred to the relevant provisions of the ITA and the EI Act. As benefits received out of an RRSP (subsection 146(8) of the ITA) must be included in the calculation of income under paragraph 56(1)(h) and section 3 of the ITA, the amount of $79,089 has to be included in Mr. Meyer's income for the purposes of sections 144 and 145 of the EI Act. Counsel for the Respondent also aptly explained to the Court that Mr. Meyer would probably like to see Parliament amend section 144 of the EI Act so as to exclude from the calculation of income any amount received as a benefit out of an RRSP, as it has been done with respect to payments out of a registered disability savings plan. [*Emphasis added*]
>
> 6 Mr. Meyer informed the Court that he now has a better understanding of the relevant provisions and that he understands that his argument cannot succeed.
>
> 7 I also explained to Mr. Meyer the role of this Court in an appeal under the ITA, which is to determine whether the assessment in issue is valid and correct in light of the relevant statutory provisions and the facts of the case (*Ereiser v. The*

Queen, 2013 FCA 20, 2013 DTC 5036, para. 31). The same principle applies for the purposes of the EI Act." [*Emphasis added*]

(9) The absence of jurisdiction in assessment deriving from provincial legislation illustrated

[31] The Crown invited the Court to apply the instruction found in *Baluyot v. Canada*, [2007] T.C.J. No. 473, 2007 TCC 682, a judgment of Justice Miller. The issue of the jurisdiction of the Court arose in the context of a credit against an Ontario tax. The taxpayer submitted that there was an exception to the rule according to which no appeal could be pursued before the Tax Court of Canada from an assessment where there were no taxes payable because of the tax credit. The essence of the Court's ruling that is of assistance to the undersigned is set out below:

> 6 The tax credit at issue in this appeal is the OFTC, which is a credit against Ontario tax and is granted under subsection 4(6) of the *Ontario Income Tax Act*. As a result, it is a provincial tax and the Tax Court of Canada does not have jurisdiction to pronounce on the validity of an assessment of provincial income taxes. (See *Sutcliffe v. R.*, [2005] 1 C.T.C. 149, at paragraph 14, and *Hennick v. Canada*, [1998] T.C.J. No. 562 at paragraph 9.).
>
> 7 The Appellant's final ground for opposing the motion to dismiss was that the issue under appeal involved the calculation of the amount of tax payable under the Federal Act. Pursuant to subsection 23(2.1) of the Ontario Income Tax Act there is no appeal from an assessment in respect of the computation of the amount of tax payable under the Federal Act to the Ontario Superior Court of Justice. He argued that by implication the Tax Court of Canada has jurisdiction to hear the present appeal.
>
> 8 I disagree with the Appellant. The Tax Court of Canada is a statutory Court and its jurisdiction is limited by statute (See *Little v. The Queen*, [2007] 2 C.T.C. 2062). [*Emphasis added*] Section 12 of the Tax Court of Canada Act provides for the matters over which this Court has jurisdiction as follows:
>
> > 12.(1) The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Air Travellers Security Charge Act*, the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, *Part V.1 of the Customs Act*, the *Employment Insurance Act*, the *Excise Act, 2001*, *Part IX of the Excise Tax Act*, the *Income Tax Act*, *the Old Age Security Act*, the *Petroleum and Gas Revenue Tax Act* and the *Softwood Lumber Products Export Charge Act*, 2006 when references or appeals to the Court are provided for in those Acts.

> Jurisdiction
>
> (2) The Court has exclusive original jurisdiction to hear and determine appeals on matters arising under the *War Veterans Allowance Act and the Civilian War-related Benefits Act* and referred to in section 33 of the *Veterans Review and Appeal Board Act*.
>
> Further jurisdiction
>
> (3) The Court has exclusive original jurisdiction to hear and determine questions referred to it under section 51 or 52 of the *Air Travellers Security Charge Act*, section 97.58 of the *Customs Act*, section 204 or 205 of the Excise Act, 2001, section 310 or 311 of the *Excise Tax Act*, section 173 or 174 of the *Income Tax Act* or section 62 or 63 of the *Softwood Lumber Products Export Charge Act*, 2006.

[32] Having just referred to *Little v. Canada*, [2006] T.C.J. No. 509, 2006 TCC 627, it will be of interest to quote the guidance provided by Justice McArthur, in light of the relative similarities between the case at Bar and the situation in *Little*. At the outset, I note that the trial judge remarked:

> 1 This motion is for an order quashing the Appellant's appeal from an assessment made by the Minister of National Revenue for the 2004 taxation year, on the grounds that this Court does not have the jurisdiction to determine whether provincial income tax is payable and, in this instance, to the Province of Nova Scotia. [*Emphasis added*]

[33] I note particularly the procedural history outlined in para. 2:

> 2 The appeal was brought under the Informal Procedure and the Respondent was granted leave to proceed with the motion on short notice. At the conclusion of the motion hearing I reserved my decision, and the Appellant proceeded with his appeal. After the hearing of the motion, and of course before giving a decision, I had stated that if I was of the same opinion after reviewing the evidence and submissions, I would grant the motion quashing the appeal for 2004. I am of the same mind. The appeal is quashed, and because I have no jurisdiction to make a binding decision with regard to residency, my opinion in that regard is just that, an opinion.

[34] The Court then stated: "5 The Tax Court of Canada is a statutory Court, and its jurisdiction is limited by statute. Section 12 of the *Tax Court of Canada Act* provides for the matters over which this Court has jurisdiction…"

[35] Counsel for the Crown also cited *Jersak v. Canada*, [2020] T.C.J. No. 112, 2020 TCC 136, a judgment of Wong J. The relevant passages follow:

> 5 By agreement with Alberta, the Minister calculates the amount of the Alberta Family Employment Tax Credit [AFETC] and Alberta Climate Leadership Adjustment Rebate [ACLAR] based on the information in an individual's filed return. However, this Court is not the legal venue when a disagreement arises with respect to these provincial amounts. Section 12 of the Tax Court of Canada Act lists the statutes over which this Court has jurisdiction and they are all federal. As I explained to Ms. Jersak at the hearing, whatever jurisdiction or ability exists to hear a dispute involving the AFETC and ACLAR will lie at the provincial level [Footnote 1 reads: *Climate Leadership Implementation Act*, S.A. 2016, c. 16; *Alberta Personal Income Tax Act*, R.S.A. 2000, c. A-30.]; I can only clearly say that this Court does not have it. [Footnote 2 reads: *Perron v. The Queen*, 2017 TCC 220 at paragraph 4. [*Emphasis added*]
>
> 6 The UCCB is a benefit governed by the federal *Universal Child Care Benefit Act*. Neither that Act nor section 12 of the *Tax Court of Canada Act* gives this Court the jurisdiction to hear disputes over the UCCB. As I explained to Ms. Jersak at the hearing, the *UCCB* Act is a short statute and does not appear to have a mechanism for resolving disputes. Again, I can only clearly say that this Court does not have jurisdiction. *[Perron v. The Queen*, 2017 TCC 220 at paragraph 4.]

[36] The further guidance I draw from the judgment of Wong J. is found at para. 7: "In the reply to the notice of appeal, the Respondent gave notice of the preliminary motion to quash the appeal of the 2013 base taxation year on the basis that no valid objection was filed; however, a section 244 affidavit was not filed in support." In this instance, there was notice to the Appellant contained in the Reply and an Affidavit, much later, but no guidance from case law.

[37] Para. 4 of the judgment of Russell J. in the case of *Perron v. The Queen*, 2017 TCC 220, is set out below:

> 4 I concur with the Respondent that this Court does not have jurisdiction to hear any appeal from denial of UCCBs and AFETCs. The UCCB is provided for in the federal *Universal Child Care Benefit Act*, but neither that statute nor any other legislation gives jurisdiction over the UCCB to this Court. *Goldstein v Her Majesty*, 2013 TCC 165 (Inf.) confirms this conclusion. As for the AFETC, it is provided for in the Alberta Personal Income Tax Act (Alberta), being provincial legislation. This Court does not have jurisdiction in respect of provincial legislation. Additionally the stated Alberta statute provides the Alberta Court of Queen's Bench with the jurisdiction to hear appeals respecting AFETC determinations. [*Emphasis added*]

[38] The last underlined sentence echoes the submission of the Respondent Crown in this case as the Court of King's Bench has been identified, without challenge, as the correct avenue for redress, though neither the Court nor the Crown were able to locate a single reported decision demonstrating recourse to that Superior Court.

[39] I note as well that Justice Russell observed at para. 3: "… Notice of the motion and a copy of the proposed Amended Reply had been served upon Ms. Perron several days earlier. Of course, whether or not an issue as to jurisdiction has been pleaded or otherwise raised by either of the parties does not affect the actual jurisdiction of this Court in any case."

[40] Further, these comments are apposite:

> 15 ... The jurisdiction of this Court, in the context of this case, simply extends to deciding whether the Minister's redeterminations as to the CCTB and GSTC/HSTC are or are not correct. No provision in the Act enables the Minister or this Court to consider the factor of undue hardship should this appeal as to the said tax credits not otherwise be allowed. Rather, consideration of that factor would be for the Alberta Court of Queen's Bench in its exercise of its comprehensive jurisdiction to establish appropriate support payments in a full family law context for Ms. Perron.

[41] Justice Woods, now a member of the Federal Court of Appeal, wrote the judgment of the Tax Court of Canada in *Goldstein v. Canada*, [2013] T.C.J. No. 131, 2013 TCC 165. The judgment records at the outset that "1. the appeal with respect to the *Universal Child Care Benefit Act* is quashed…" The Court went on to remark at para. 3: "There are two preliminary matters. First, the appeal under the *Universal Child Care Benefit Act* should be quashed because this Court does not have the authority to decide appeals under this legislation: *Fatima v. The Queen*, 2012 TCC 49."

[42] Justice Woods also rendered judgment in the case of *Fatima*, 2012 TCC 49, and I find it of assistance to reproduce paragraphs 5 and 6, that serve to explain why the Court quashed the appeal with respect to benefits under the *Universal Child Care Benefit Act*.

> 5 At the hearing, I raised a question as to whether the Tax Court of Canada has jurisdiction with respect to the *UCCB*. Counsel for the Crown responded that the residence issue was the same under both statutes and that the Court's decision concerning the child tax benefit under the *Income Tax Act* would be followed for purposes of the *UCCB*. This may be a satisfactory practical solution in this case,

> but the jurisdiction issue should have been mentioned in the Reply. [*Emphasis added*]
>
> 6 In *Moise v The Queen*, 2009 TCC 187, Sheridan J. concluded that the Tax Court of Canada did not have jurisdiction with respect to the *UCCB*. I see no reason to depart from this decision. The appeal with respect to benefits under the *UCCB* will therefore be quashed.

[43] With respect to the judgment in *Moïse v. Canada*, [2009] T.C.J. No. 140, 2009 TCC 187, decided by Sheridan J., it supports the Crown's submission in the case at Bar. As we read at para. 3:

> 3 At the hearing, counsel for the Respondent correctly raised a preliminary objection to the Appellant's having included in her appeal a request for relief in respect of her claim under the *Universal Child Care Benefit Act* on the basis that this Court does not have jurisdiction over such appeals. Upon understanding this, the Appellant effectively withdrew that aspect of her appeal.

(10) A case that summarizes well the foregoing review of the case law

[44] *Bauer v. Canada*, [2016] T.C.J. No. 104, 2016 TCC 136, was also cited by the Crown counsel in support of its argument that the Court is without jurisdiction. In particular, I was invited to consider the following passages from the judgment of Lyons J:

> 2 Generally, the grounds in the Motion are that the appellant pled factual allegations, issues and arguments relating to matters outside this Court's jurisdiction which have no chance of success, are frivolous, abusive and, if retained, would delay the appeal. [*Emphasis added*] Specifically, the pleading improperly:
>
> a) focuses on conduct of Canada Revenue Agency officials during the investigation, audit, reassessment and objection processes ("CRA officials" and "CRA conduct"), the disclosure of documents under the Privacy Act and the legality of the requirements for information ("requirements");
>
> […]
>
> Jurisdiction of the Tax Court
>
> 10 As a statutory Court, this Court has been granted exclusive original jurisdiction to determine references and appeals from assessments (or reassessments) made under the ITA. [Footnote 3 reads: Section 12 of the *Tax Court of Canada Act*, The Tax Court is a superior Court.] That authority, combined with subsections 169(1) and 171(1) of the ITA, limits the Court's statutory jurisdiction to determining the

> validity and correctness of an assessment as to a taxpayer's liability for the amount of tax assessed and enables the Court to dismiss an appeal or allow an appeal by vacating, varying or referring the assessment back to the Minister for reconsideration and reassessment. [*Emphasis added*]

[45] Thereafter, the Court was invited to scrutinize these paragraphs, and though they are lengthy, they are very important and are thus reproduced in full:

> 24 Significantly, the jurisdictional limits of this Court are not only circumscribed by section 169 of the ITA, but have been consistently reaffirmed by the findings of the Federal Court of Appeal in *Main Rehabilitation Co. v Canada*, [2004 FCA 403, 2004 DTC 6762 (FCA)], *Ereiser*, [2013 FCA 20, 2013 DTC 5036, leave to appeal to SCC refused, 3529, [2013] S.C.C.A. No. 167 (April 5, 2013)], Canada *(Minister of National Revenue - MNR) v JP Morgan Asset Management (Canada) Inc.*, [2013 FCA 250, 2014 DTC 5001], and other jurisprudence. That is, the Tax Court's jurisdiction in a tax appeal is limited to determining if an assessment is valid and correct, but does not include challenges to the processes by which the reassessments and tax liability were established, the manner/method in which the amount was determined, the exercise of ministerial powers nor CRA conduct generally (the "*Main* principle). [*Emphasis added*]
>
> 25 In *Main*, Rothstein J.A., as he then was, stated that:
>
> [8] This is because what is in issue in an appeal pursuant to section 169 is the validity of the assessment and not the process by which it is established [...] Put another way, the question is not whether the CCRA officials exercised their powers properly, but whether the amounts assessed can be shown to be properly owing under the Act [...] [*Emphasis added*]
>
> 26 After reaffirming the *Main* principle, the Court in *Ereiser* held that "it is plain and obvious that this Court will not vacate the reassessments under appeal on the basis of the wrongful conduct of a tax official in authorizing them". Sharlow J.A. stated:
>
> > [31] [...] the role of the Tax Court of Canada in an appeal of an income tax assessment is to determine the validity and correctness of the assessment based on the relevant provisions of the Income Tax Act and the facts giving rise to the taxpayer's statutory liability. Logically, the conduct of a tax official who authorizes an assessment is not relevant to the determination of that statutory liability. It is axiomatic, the wrongful conduct of an official is not relevant to the determination of the validity or correctness of an assessment. ...
>
> 27 Even where CRA conduct leading up to an assessment is reprehensible, this Court does not have jurisdiction. As stated by Stratas J.A. in *J.P. Morgan*:

> [83] The Tax Court does not have jurisdiction on an appeal to set aside an assessment on the basis of reprehensible conduct by the Minister leading up to the assessment, such as abuse of power or unfairness[...] If an assessment is correct on the facts and the law, the taxpayer is liable for the tax. [Footnote 13 reads: Ibid at paragraph 83. In *Ereiser*, see paragraphs 36 and 37. *Leroux v Canada (Revenue Agency)*, 2012 BCCA 63, example of tort action in the British Columbia Superior Court. In *J.P. Morgan*, various causes of action are detailed at paragraph 89 noting recourse is available in the provincial superior courts or possibly the Federal Court's judicial review process depending on the issue.

III. Conclusion

[46] The submissions of the Respondent, both written as set out in the Reply and oral advanced at the hearing, are sound in light of the analysis set out above and are adopted by the Court. The Appeal framed by the Appellant involves a subject matter that is beyond the jurisdiction of the Court and the Appeal is quashed.

[47] No costs were sought and no costs are awarded.

Signed Ottawa, Canada this 27th day of March 2023.

"Gilles Renaud"

Renaud D.J.

Deputy Judge Renaud

CITATION:	2023 TCC 27
COURT FILE NO.:	2022-1576(IT)I
STYLE OF CAUSE:	HEIDI MELENCHUK AND HIS MAJESTY THE KING
PLACE OF HEARING:	Regina , Saskatchewan
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REASONS FOR JUDGMENT BY:	The Honourable Gilles Renaud, Deputy Judge
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APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Steven Tymiak

COUNSEL OF RECORD:

For the Appellant:

Name:	The Appellant herself
Firm:	

For the Respondent:	Steven Tymiak Deputy Attorney General of Canada Ottawa, Canada